Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
	)	
General Communication, Inc. Request for Clarification of Clerical Changes to 47 C.F.R. §54.307 and for Direction to USAC	)	

COMMENTS OF
INDEPENDENT TELEPHONE AND TELECOMMUNICATIONS ALLIANCE;
NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.;
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION;
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES;
UNITED STATES TELECOM ASSOCIATION (USTELECOM); and
WESTERN TELECOMMUNICATIONS ALLIANCE

I. INTRODUCTION AND SUMMARY

The Independent Telephone and Telecommunications Alliance, the National Exchange Carrier Association, Inc. (NECA), the National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, United States Telecom Association (USTelecom), and Western Telecommunications Alliance (the "Associations") file these Comments in response to the Wireline Competition Bureau's (Bureau) *Public Notice*[1] in the above-captioned matter.[2]

[1] The Wireline Competition Bureau Seeks Comment on Request for Clarification of Clerical Changes to 47 C.F.R. § 54.307 and for Direction to USAC, *Public Notice*, DA 05-2184 (July 27, 2005).

[2] The Associations are membership organizations that collectively represent all incumbent local exchange carriers providing service in the United States. The Associations' members would be substantially affected by grant of the instant request to the extent they receive high cost loop universal service support. In

General Communication Inc. (GCI) has asked the Commission to direct the Universal Service Administrative Company (USAC) to withdraw certain "informal policy guidance" that USAC is said to have provided regarding calculation of universal service support payments,[3] and to instruct USAC that certain provisions of the *Fourth Reconsideration Order* in this proceeding, governing subtraction of support paid to incumbent local exchange carriers (ILECs) when lines are "captured" by competitive eligible telecommunications carriers (CETCs), remain in effect.[4] GCI's request is made notwithstanding the fact that in its *Ninth Report and Order* in this proceeding[5] the Commission deleted the support subtraction language from its rules (an act that GCI claims was either a clerical error or, if intentional, taken without authority under the Administrative Procedure Act (APA)).

GCI's request fails to recognize that the methodology changes made in the *Ninth Report and Order* to rules governing support portability payments for non-rural carriers (changes mirrored for rural carriers in 2001 in the Commission's *RTF Order*[6]) rendered the "ILEC support subtraction" language adopted in the *Fourth Reconsideration Order*

---

addition, to the extent that grant of GCI's request would result in reductions in interstate common line and/or local switching support NECA's common line and traffic sensitive access rates and pool revenue distributions may be adversely affected as well.

[3] Letter to Thomas Navin, FCC, from John Nakahata, Counsel for GCI, *Request for Clarification of Clerical Changes (sic) and for Direction to USAC*, CC Docket No. 96-45 (filed June 29, 2005) (*GCI Letter).*

[4] *Id., citing* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, *Fourth Order on Reconsideration,* 13 FCC Rcd 5318, 5366-68 (1997) (*Fourth Reconsideration Order).*

[5] *Id.* at 5, *citing* Federal-State Joint Board on Universal Service, *Ninth Report & Order and Eighteenth Order on Reconsideration,* CC Docket No. 96-45, 14 FCC Rcd 20432 (1999) (*Ninth Report and Order*).

[6] Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, CC Docket Nos. 96-45, 00-256, *Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking,* 16 FCC Rcd 11244 (2001) (*RTF Order*).

superfluous. Deletion of this language from former section 54.307(a)(4) of the Commission's rules was therefore not a clerical error but was instead a logical consequence of other actions taken in the *Ninth Report and Order* to "ensure equitable, non-discriminatory and competitively-neutral treatment" of ILECs and CETCs.

Deletion of former section 54.307(a)(4) of the Commission's rules was also done in full accordance with the APA, notwithstanding the fact that the Commission did not provide a separate notice of its intent to do so or explain in detail why this particular rule change (out of hundreds made to its universal service rules in the early stages of this proceeding) was necessary.

Finally, the rule provision that GCI seeks to have restored was shown to be unworkable, unnecessary and anti-competitive more than six years ago and should not be resurrected at this late date. Adding it back would radically distort universal service support payments in ways that violate both competitive equity principles and the Act's even more fundamental requirement that universal service support be "specific, predictable and sufficient."[7] The Bureau should, therefore, deny GCI's request.

II. DELETION OF THE ILEC SUPPORT SUBTRACTION LANGUAGE FROM FORMER SECTION 54.307(a)(4) OF THE COMMISSION'S RULES WAS A LOGICAL OUTGROWTH OF OTHER RULE CHANGES VALIDLY MADE IN THE *NINTH REPORT AND ORDER* AND NOT A "CLERICAL ERROR."

From the beginning of this proceeding the Commission has made clear that CETCs are entitled to receive universal service support for lines "captured" from ILECs, and that support should be paid to CETCs at the same per-line level of support received

[7] 47 U.S.C. § 254(b)(5)

by ILECs serving the same areas.[8] While recognizing that different support payment methods should apply based on the way service is provided,[9] in the case of facilities-based services, the rules unambiguously require that CETCs should receive the full amount of support that the ILEC would have received for serving a particular customer.

In this regard, section 54.307(a)(4) of the Commission's rules, as originally promulgated, stated:

> A competitive eligible telecommunications carrier that provides the supported services using neither unbundled network elements purchased pursuant to Sec. 51.307 of this chapter nor wholesale service purchased pursuant to section 251(c)(4) of the Act will receive the full amount of universal service support *previously provided to the ILEC for that customer*.[10]

By its terms, section 54.307(a)(4) of the Commission's rules not only required that facilities-based CETCs receive the full amount of support payable to an ILEC for serving a particular customer, but also appears to have contemplated that "previously provided" support would be redirected (*i.e.*, subtracted) from the ILEC to any CETC that captured the customer.[11]

---

[8] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Report and Order*, 12 FCC Rcd 8776 (1997) at ¶ 287 *(May 8, 1997 Report and Order)* ("A competitive carrier that has been designated as an eligible telecommunications carrier shall receive universal service support to the extent that it captures subscribers' lines formerly served by an ILEC receiving support or new customer lines in that ILEC's study area. At the same time, the ILEC will continue to receive support for the customer lines it continues to serve.")

[9] For example, when a CETC provides service via resale of an ILEC's service, there would be no need to pay support at all to the CETC. Similarly, when a CETC provides service using unbundled network elements (UNEs) obtained from the ILEC, the Commission determined that the CETC should receive the lesser of the UNE price or the ILEC's per-line support amount, if any. *Id.* at ¶ 312.

[10] 47 C.F.R. § 54.307(a)(4) (1997) (emphasis added).

[11] At the time the initial *May 8, 1997 Report and Order* was issued, the Commission expected high cost support payments would be based on the basis of a forward-looking cost model and not necessarily on the basis of an ILEC's individual embedded costs. *See, e.g., May 8, 1997 Report and Order* at ¶ 199 ("[W]e today establish that the level of support for service to a particular customer will ultimately be determined based upon the forward-looking economic cost of constructing and operating the network facilities and functions used to provide that service."). Pending development of such a model, however, the Commission found that the least burdensome way to administer portable support would be to base CETC

In a hypothetical environment where a fixed number of customers purchase only one supported service apiece, from one carrier at a time, and where both ILECs and CETCs simultaneously submit reports of lines served, former section 54.307(a)(4) would have automatically caused CLEC and ILEC support to be divided in proportion to market share. In such an environment, no "subtraction" provision would be needed.[12]

Enormous practical difficulties were soon identified with administering the Commission's original support portability rules, however, including the lack of any way to determine whether a particular line has been "captured" by a CETC or simply gained as a result of new customers arriving in an area, and the fact that customers often decide to purchase supported services from multiple ETCs. These issues, along with many others, are properly the subject of ongoing rulemaking proceedings before the Commission as well as the Federal-State Joint Board on Universal Service.[13]

Of particular relevance here, however, is the fact that the Commission's initial portable support rules did not provide for simultaneous submission of line counts from ILECs and CETCs. To the contrary, the rules provided that per-line support would be paid to an ILEC based on its previously-reported annual loop count, without immediately

---

support on the per-line support amount received by the ILEC serving a given study area. *Id*. at ¶ 288 (a similar discussion covering rural study areas appears at ¶¶ 311-12 of the *May 8, 1997 Report and Order*.)

[12] For example, in a hypothetical service territory with 1000 customers receiving $10,000 in support, in year one the ILEC may serve all customers and receive the full $10,000 in available support. In year two, if a CETC were to capture 250 of these customers, and support remains fixed at $10/line, the total support amount would be divided in proportion to market share upon receipt of reports from the ILEC and the CETC indicating that they now served 750 and 250 of the 1000 lines, respectively.

[13] *See e.g.* Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Notice of Proposed Rulemaking*, 19 FCC Rcd 10805 (2004), seeking comment on the Joint Board's Recommended Decision limiting high-cost support to a single connection that provides a subscriber access to the public telephone network; NTCA Petition for Rulemaking to Define "Captured" and "New" Subscriber Lines for Purposes of Receiving Universal Service Support Pursuant to 47 C.F.R. § 54.307, et seq., RM No. 10522 (filed July 26, 2002) (*pending*).

taking into account the loss of any lines that may have been "captured" by a CETC during the period.

For example, assume that Carrier A, an ILEC, reported 1000 lines in service at the end of 1998, and assume further that high cost support for those lines equaled $10,000 per month, making $10/line/month available to CETCs for each "captured" line. Carrier B, a CLEC, gains ETC status on July 1, 1999 and reports 100 customers as of March 31, 1999 to the Administrator. Of those 100 lines, 50 were "captured" and 50 represented new customers to the market. Carrier B would receive $1,000 in universal service support, including $500 for "captured" lines, while Carrier A would continue to receive $10,000 in universal service support based on its prior line count. Under this scenario, both Carrier A and Carrier B get paid for the 50 "captured" lines.

In its *Fourth Reconsideration Order* in CC Docket No. 96-45, the Commission clarified (in response to a petition filed by GCI) that universal service support amounts provided to an ILEC must be reduced by an amount equal to the amount provided to CETCs for customer lines it has captured from the ILEC.[14] This additional language was seen as necessary to assure that when a CETC receives support for a customer pursuant to section 54.307(a)(4) of the Commission's rules, "the incumbent LEC will lose the support it previously received that was attributable to that customer."[15] In the example described above, support payments to Carrier A would have been reduced by $500 per month, representing support for captured lines paid to the CETC.

[14] *Fourth Reconsideration Order* at ¶ 84.

[15] *Id.*

Shortly after the "ILEC support subtraction" language was added to former section 54.307(a)(4) of its rules, the Commission was informed that unintended changes in support flows would occur as a result. Specifically, on February 11, 1999, USAC sent a letter to the Commission requesting clarification of the amended rule because it appeared that calculating per-line support amounts for CETCs prior to subtraction of support from the ILEC would cause CETCs to receive more support per line than the ILEC – in direct conflict with the Commission's "equal support per line" rule.[16]

The Commission did not respond directly to USAC's letter but, in its *Seventh Report and Order and Further Notice of Proposed Rulemaking* in this proceeding, did ask for comment on how support paid under the "hold-harmless" mechanism[17] could be administered in such a way that ILECs would not be held harmless for reductions in their federal high-cost support amounts that result from CETCs capturing ILEC customers.[18] Subsequently, in its *Ninth Order on Reconsideration*, the Commission addressed this issue by synchronizing line count reporting for both ILECs and CETCs. Specifically, the Commission required non-rural carriers to submit quarterly reports of line counts to USAC, thus assuring that non-rural ILEC line counts were calculated on the same basis as CETC line counts. The Commission explained its action as follows:

---

[16] Letter to Irene Flannery, Chief, APD, FCC, from Robert Haga, USAC (Feb. 11, 1999) (copy attached as Appendix A). Using an example similar to the one described above, USAC explained to the Commission that subtracting from the ILEC's support amount the support paid to a CETC for captured lines caused the ILEC to receive a smaller amount per-line than the amount paid to the CETC.

[17] Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Access Charge Reform, CC Docket No. 96-262, *Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45 Fourth Report and Order in CC Docket No. 96-262 and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 8078 (1999) (*Seventh Report and Order and Further Notice of Proposed Rulemaking).*

[18] *Id.* at ¶ 74.

> [W]e are adopting several amendments to the current data reporting requirements to ensure that cost and loop count data submitted by non-rural carriers under Part 36 will conform with loop count data submitted under our Part 54 rules for forward-looking support. All carriers serving customers in areas served by non-rural incumbent LECs will be required to file data on a quarterly schedule. By synchronizing the reporting requirements for non-rural high-cost support, we can ensure that all non-rural carriers receive support based on data from the same time periods. We conclude that this synchronization will result in a high-cost support mechanism that is easier to administer and is more equitable, non-discriminatory, and competitively neutral.[19]

Synchronizing line count reporting dates for ILECs and CETCs assured that both types of carriers receive equal amounts of support per line for each line they serve. As the Commission stated, the reporting requirements established in the *Ninth Report and Order* were intended "to ensure that forward-looking support provided under Part 54 and interim hold-harmless support provided under Part 36 and section 54.303 are based on data from the same reporting periods, *and to ensure equitable, non-discriminatory, and competitively neutral treatment of incumbent LECs and competitive eligible telecommunications carriers . . . .*"[20]

Moreover, by having competitive entrants and non-rural incumbents report line counts as of the same point in time, any apparent need to reduce support amounts for the ILEC for lines captured by a CETC was eliminated. Since there was no longer any need to subtract support from the ILEC, the Commission's deletion of former section 54.307(a)(4) of its rules logically followed and thus cannot be considered a clerical error.

[19] *Ninth Report and Order* at ¶ 87.

[20] *Id.* at ¶¶ 89-92.

III. THE COMMISSION WAS AUTHORIZED UNDER THE ADMINISTRATIVE PROCEDURE ACT TO DELETE FORMER SECTION 54.307(a)(4) FROM ITS RULES WITHOUT SEPARATE NOTICE AND COMMENT.

GCI argues as an alternative to its "clerical error" theory that the Commission's deletion of former section 54.307(a)(4) violated the notice and comment requirements of the APA. In GCI's view, the Commission did not give sufficient notice that it was considering deleting that particular section of the rules nor provide sufficient explanation of why the support subtraction mechanism described in paragraph 84 of the *Fourth Reconsideration Order* was no longer necessary.[21]

The Commission's actions are fully defensible under the APA. Courts have made clear that administrative agencies such as the FCC are under no obligation to issue a separate notice of proposed rulemaking when a particular action is a "logical outgrowth" of proposed rule changes.[22] Indeed, the Court of Appeals for the District of Columbia circuit has reaffirmed this fundamental principle of administrative law as recently as August 5, 2005.[23] In *Crawford v. FCC,* a petitioner had challenged the Commission's dismissal of two proposals to amend its table of FM radio allotments. One of the petitioner's contentions in support of his appeal was that the FCC failed to provide him with sufficient notice that a counterproposal made by other parties would preclude his proposal. That contention was rejected by the Court:

---

[21] *GCI Lette*r at 4.

[22] *See, e.g., First Am. Discount Corp. v. Commodity Futures Trading Comm'n*, 222 F.3d 1008, 1015 (D.C. Cir. 2000); *Fertilizer Inst. v. EPA*, 935 F.2d 1303, 1311 (D.C. Cir. 1991); *Weyerhaeuser Co. v. Costle*, 590 F.2d 1011, 1031 (D.C. Cir. 1978).

[23] No. 04-1031, *slip op.* (D.C. Cir. August 5, 2005).

> The notice-and-comment requirements presume that the contours of the agency's final rule may differ from those of the rule it initially proposes in an NPRM. It is well-settled that an agency need not initiate a new notice-and-comment period as long as the rule it ultimately adopts is a "logical outgrowth" of the initial notice.[24]

As shown above, deletion of the "support subtraction" provision of section 54.307 followed logically from the Commission's decision to synchronize reporting schedules for ILEC and CETCs line counts, an action taken in response to proposals set forth in the Commission's *Seventh Report and Order and Further Notice of Proposed Rulemaking* in this proceeding. Although that proposal specifically addressed only "hold harmless" support for non-rural companies, extension of a synchronized reporting requirement to other support mechanisms (in the *Ninth Report and Order* for non-rural companies, and in the *RTF Order* to rural companies), as well as deletion of the now-unnecessary ILEC support subtraction language, was an outgrowth of this change and no separate notice was required under the APA.

IV. GCI'S REQUEST SHOULD BE TREATED AS A LATE-FILED PETITION FOR RECONSIDERATION AND DISMISSED AS UNTIMELY. IN ANY EVENT, THE COMMISSION SHOULD NOT REINSTATE THE ILEC SUPPORT SUBTRACTION MECHANISM AT THIS LATE DATE.

GCI argues that because the *Ninth Report and Order* did not expressly repudiate the actions taken by the Commission in the *Fourth Reconsideration Order,* and because the *Ninth Report and Order* did not address issues related to High Cost Loop support or Local Switching support for rural carriers, there was no basis for the Commission to have reconsidered the portability portion of the *Fourth Reconsideration Order*.

[24] *Id*., at 8. *See also, California Citizens Band Ass'n v. U.S.*, 375 F.2d 43 (D.C. Cir.), *cert. denied*, 389 U.S. 844 (1967). (The Administrative Procedures Act "does not require an agency to publish in advance every precise proposal which it may ultimately adopt as a rule." *Id*., 375 F.2d at 48.

GCI's request should be dismissed at the threshold as untimely. Section 1.106 of the FCC's rules, 47 C.F.R. §1.106, requires that petitions for reconsideration of an action taken in a rulemaking proceeding must be filed with the FCC no later than 30 days after the new or amended rule is published in the Federal Register. The FCC routinely dismisses late-filed petitions for reconsideration.[25] In this case, the *Ninth Report and Order* was adopted in 1999, more than five years prior to GCI's filing. Even if time is counted from June 22, 2004 (the day notice appeared in the Federal Register correcting the CFR to indicate the support subtraction language had been deleted from section 54.307(a)), GCI's request is nearly a year out of date and thus must be dismissed.

In the event the Bureau does consider GCI's request on the merits, the fact that the Commission did not provide a specific explanation as to why it removed the ILEC support subtraction language from former section 54.307(a) in the *Ninth Report and Order* does not justify replacement of this language at this late date. As shown above, subtracting support paid to CETCs from ILEC support amounts causes per-line support amounts paid to ILECs to fall below those paid to CETCs. While GCI perhaps would prefer this result, it would run contrary to the Commission's goal of maintaining competitive neutrality between market participants.

Other actions taken by the Commission since the *Ninth Report and Order* make clear the Commission's policies on support portability do not support reinstatement of the ILEC support subtraction language in section 54.307(a) of the Commission's rules. For

[25] *See, e.g.*, Applications of Hispanic Information and Telecommunications Network, Inc. for Authority to Construct New Instructional Television Fixed Service Station on the C Group Channels, Milwaukee, Wisconsin and Milwaukee Regional Medical Instructional Television Station, Inc. for Renewal of Instructional Television Fixed Service Station WAU27 License, on the C Group Channels, Milwaukee, Wisconsin, *Memorandum Opinion & Order*, 20 FCC Rcd 801 (2005); Nine Applications for Authority to Construct and Operate Multipoint Distribution Service Stations at Bismarck, North Dakota, *Memorandum Opinion & Order*, 10 FCC Rcd 11277 (1995) at ¶19.

example, the current support portability rules have been criticized because they cause CETCs to receive increasing amounts of per-line support as an ILEC loses lines, without any regard to whether those per-line payments reflect the CETC's cost of providing service.[26] While one theoretical solution to this problem would be to "freeze" per-line support amounts payable in study areas served by two or more CETCs, the Commission specifically rejected this approach in its *RTF Order* based on findings that rural ILECs have high fixed costs and that a loss of subscriber lines to a CETC would unlikely be offset by a corresponding reductions in embedded ILEC network costs.[27]

Reinstating the ILEC support subtraction language set forth in former section 54.307(a)(4) of the Commission's rules would not only cause ILEC support levels to fall below CETC support payments on a per line basis, but would also cause ILEC support payments to fall below levels required to maintain viable networks, in violation of the *RTF Order* as well as the Act's requirement that support be "specific, predictable and sufficient." A rural ILEC's support has always been based on the actual embedded costs of constructing and maintaining its network. Dividing that network-based support amount by the number of ILEC lines has only been done to determine the amount of support a CETC will receive under the current rules. Regardless of the number of active lines a rural ILEC is serving at any particular point in time, as the carrier of last resort it

[26] See National Telecommunications Cooperative Association Initial Comments, CC Docket No. 96-45 (filed Aug. 6, 2004) at 3; Comments of the Organization for the Promotion and Advancement of Small Telecommunications Companies, CC Docket No. 96-45 (filed Oct. 15, 2004) at 24; Comments of the Rural Telecommunications Associations, CC Docket No. 96-45 (filed Aug. 6, 2004) at 5.

[27] *RTF Order* at ¶ 125.

must continue to maintain its whole network, which has been built to provide service throughout the entire study area.[28]

The primary purpose of the high cost program is to encourage infrastructure investment in high-cost rural areas. If rural ILECs were uncertain that they would be able to recover their network costs, they would be reluctant to invest in infrastructure. Moreover, if the capital markets believed that rural ILECs would not be able to recover their costs, financing for rural telecommunications would quickly become scarce. As a result, Congressional universal service policy objectives would not be achieved, as consumers in high-cost rural areas would soon find themselves without access to services that are reasonably comparable to those offered in urban areas.

In addition, most rural ILECs are rate-of-return regulated, which permits them to fully recover their interstate-allocated costs of providing service as the carrier of last resort in their service areas. For these carriers, all of the revenues they receive from high-cost support are a part of their legitimate interstate revenue requirement. Rate-of-return regulation, in concert with high-cost support, has been highly successful in promoting infrastructure investment in rural service areas and ensuring that even the most remotely located consumers receive high-quality, affordable and "reasonably comparable" services and rates.

No public interest benefit would be served by reinstating an outdated, unnecessary, and unworkable rule that has been shown to harm both universal service and competition. In the event the Bureau chooses to consider the merits of GCI's request, it should act promptly to deny the requested relief.

[28] In many states, ILECs must maintain disconnected lines under carrier-of-last-resort obligations requiring them to reinstate service within a specified timeframe, and must provide E911 service to otherwise "disconnected" lines.

V. CONCLUSION

The Bureau should either dismiss GCI's "Request for Clarification of Clerical Changes and for Direction to USAC" as untimely, or deny it on grounds that the rule amendment at issue was not, in fact, a "clerical change" but was instead a reasonable and deliberate action taken by the Commission in compliance with the requirements of the APA. The Bureau should not in any event provide the requested direction to USAC to reinstitute or initiate the support subtraction procedures required under former section 54.307(a)(4) of the Commissions' rules because doing so would produce unequal per-line universal service payments to ILECs and CLECs and harm universal service in competitive areas by causing support levels to ILECs to fall below levels required to maintain existing wireline networks.

Respectfully submitted,

August 17, 2005

INDEPENDENT TELEPHONE &
TELECOMMUNICATIONS ALLIANCE

By: /s/ David W. Zesiger
David W. Zesiger
Executive Director
1300 Connecticut Ave., NW Suite 600
Washington, DC 20036
(202) 355-1388

NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

By: /s/ Richard A. Askoff
Richard A. Askoff
Its Attorney
80 South Jefferson Road
Whippany, New Jersey 07981
(973) 884-8000

NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

By: /s/ Daniel Mitchell
Daniel Mitchell
Jill Canfield
Its Attorneys
4121 Wilson Boulevard
10th Floor
Arlington, VA 22203
(703) 351-2000

ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

By: /s/ Stuart Polikoff
Stuart Polikoff
Director of Government Relations
21 Dupont Circle NW
Suite 700
Washington, DC 20036
(202) 659-5990

UNITED STATES TELECOM
ASSOCIATION (USTELECOM)

By: /s/ James W. Olsen
James W. Olsen
Vice President, Law & General Counsel
Indra Sehdev Chalk
Jeffrey Lanning
Robin E. Tuttle
Its Attorneys
607 14th Street, N.W., Suite 400
Washington, DC 20005
(202) 326-7269

WESTERN TELECOMMUNICATIONS
ALLIANCE

By: /s/ Gerry Duffy
Gerry Duffy
Counsel for WTA
227 Massachusetts Ave. N.E., Suite 302
Washington, DC 20002
(202) 548-0202

Appendix A

USAC
UNIVERSAL SERVICE
ADMINISTRATIVE CO.

2120 L Street, N.W., Suite 600
Washington, D.C. 20037
Voice: (202) 776-0200 Fax: (202) 776-0080

Robert Haga
Secretary & Treasurer
rhaga@universalservice.org

February 11, 1999

Ms. Irene Flannery
Chief, Accounting Policy Division
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C., 20554

Re: Clarification of Section 54.307

Dear Ms. Flannery:

Several parties have questioned USAC regarding the operation of Section 54.307 of the Commission's rules. As a result of these inquiries, USAC's High Cost and Low Income Committee authorized the corporation to seek clarification of Section 54.307 as it relates to the calculation of Universal Service support for both the competitive eligible telecommunications carrier (CETC) and the incumbent local exchange carrier (ILEC) in situations where both carriers are eligible recipients of support.

Specifically, we seek clarification of the phrase "captures an incumbent local exchange carrier's (ILEC) subscriber lines" in the calculation of support for the CETC.[1] Does the term "capture" mean only instances where the subscriber abandoned the ILEC's service for the CETC, or does it include instances where the subscriber adds service from the CETC in addition to its ILEC service (e.g., a second wireline service or wireless service)?

Additionally, USAC seeks clarification of the Section 54.307(a)(4) calculation methodology. Section 54.307(a)(4) requires that the amount of universal service support provided to an ILEC be reduced by an amount equal to the amount provided to such CETC for the lines that it captures from the incumbent. Did the Commission intend for USAC to calculate a per line amount for the CETC as described in Section 54.307 (a)(2), multiply the resulting amount by the number of captured lines, and subtract that amount from the support originally calculated for the incumbent per Section 54.307 (a)(4)?

1 47 C.F.R. § 54.307(a).

The current rules operate such that ILEC "A" and CETC "B" would report their respective number of working loops as of December 31 of the previous year[2] (this assumes ILEC "A" and CETC "B" are both eligible telecommunications carriers providing service in ILEC "A's" serving area).[3] If ILEC "A" reports 800 lines and has total high cost support of $8,000 per month, the resulting per line support amount is equal to $10 per line per month. CETC "B" for that same period reports 200 customer lines in the service area, 100 of which are new customers and 100 of which have been "captured" from ILEC "A." The amount of support for CETC "B," at $10 per line, would then be $2000.[4] USAC then deducts the support amount associated with CETC "B's" captured lines from ILEC "A's" support.[5] ILEC "A's" support amount is thus adjusted to $7,000 per month ($8,000 minus $1,000 support associated with CETC "B's" 100 captured lines). Thus the operation of the rules provide $8.75 per line in support for ILEC "A's" 800 lines and $10 per line of support for CETC "B's" 200 lines.

We appreciate the Commission's attention to clarifying whether the operation of this section of its rules is what was intended or whether some other outcome should result. Please contact us if there are any questions regarding our request or if there is anything further we can do for you.

Sincerely,

Robert Haga
Secretary & Treasurer

RH:cah:\

Enclosure

cc: Craig Brown
Lisa Zaina
Tom Power
Linda Kinney
Kyle Dixon
Kevin Martin
Paul Gallant

2 47 C.F.R. §§ 36.611(h), 54.307(b).
3 47 C.F.R. §§ 54.201-54.207.
4 47 C.F.R. § 54.307(a)(1).
5 47 C.F.R. § 54.307(a)(4).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Association's Comments was served this 17th day of August 2005, by electronic delivery or electronic mail to the persons listed below.

By: /s/ Elizabeth R. Newson
Elizabeth R. Newson

The following parties were served:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554
(filed via ECFS)

Best Copy and Printing, Inc.
Room CY-B402
445 12th Street, S.W.
Washington, DC 20554
www.bcpiweb.com

John T. Nakahata
Harris Wiltshire & Grannis LLC
1200 Eighteenth Street N.W., 12th Floor
Washington, DC 20036
jnakahata@harriswiltshire.com
Counsel for General Communication, Inc.